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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of

Administration of the
North American Numbering Plan

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CC Docket No. 92-237

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

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SUMMARY

Fair and efficient number administration is essential to the growth of telecommunications competition. Unfortunately, current number administration in the United States is not fair or efficient, and thus directly impedes the growth of competition. The post-divestiture numbering system has led to discrimination, unnecessary obstacles, and delays in competitive entry because it is based on an anticompetitive model—incumbents administering numbering resources that are crucial to their competitors—which requires that Bellcore finally be replaced as the North American Numbering Plan Administrator (“NANPA”). This monopoly-era approach to telephone numbering conflicts with the overriding deregulatory and pro-competitive goals of the Telecommunications Act of 1996, directly violates the requirement of number administration neutrality set forth in the 1996 Act, and cannot be permitted to continue one day longer than it absolutely must.

MCI applauds the Commission’s dedication to developing a new model for telephone numbering administration, and strongly endorses NANC’s recommendation that Bellcore be replaced as the NANPA by Lockheed Martin. It is important that the FCC act rapidly to implement these recommendations. Although the Commission first began examining the need for a new NANPA in 1991, and despite the requirement in Section 251(e) of the 1996 Act that the Commission transfer NANPA authority from Bellcore and the incumbent LECs to a neutral and impartial number administrator, the Commission still has yet to act on this competitively vital subject. Declaring in the July 1995 *NANP Order* that it will select a non-aligned, objective numbering administrator is no substitute for the Commission actually choosing a successor to Bellcore.

The concerted efforts of a broad cross-section of the telecommunications industry participated in the NANC activities leading to NANC's May 15, 1997 recommendation of Lockheed Martin for selection as the new NANPA. MCI is pleased to have had the opportunity, along with many other industry, consumer and state regulatory groups, to assist the NANC in providing well-reasoned and timely recommendations to the Commission. We believe the open NANC process has led to a sensible result that is in the best interests of telecommunications providers, customers and regulators, and will best serve the public interest.

NANC's recommendation of Lockheed Martin as the new NANPA is correct because Lockheed is technically and operationally able to perform as NANPA, offers very substantial price savings, and will deliver efficiency and synergy advantages to number administration activities. The cost savings Lockheed Martin offers over the runner-up will amount to \$1.5 million for MCI alone. The historic monopoly position of Bellcore and incumbent LECs in numbering has led to a host of inefficient practices that Lockheed will eliminate, to the benefit of carriers, users and regulators. But MCI cautions that it is absolutely essential that the NANC's recommended conditions regarding intellectual property rights and a fixed price for NANPA services—proposed rules that enforce important concessions Lockheed made to NANC as part of the selection process—are adopted as Commission regulations. MCI also supports the recommendation of NECA as the NANPA billing and collection agent, because B&C functions can be confined to ministerial activities unrelated to number administration or numbering policies, provided that NECA implements the NANC's recommended

neutrality cure and requires balanced representation, from of all industry segments, on a completely independent NECA board.

The Commission has set forth a good long-term structure for number administration in a competitive telecommunications environment, and the NANC has provided sensible recommendations for fair and efficient numbering through a process representative of industry, consumer and regulatory interests. Thus, the Commission can and should quickly implement the NANC recommendations and, at long last, begin the transition to a new, neutral model for telephone number administration. While MCI may not be satisfied with every aspect of the NANC recommendations, the FCC should remain sensitive to efforts by those whose views were not accepted by NANC—whether rejected applicants or NANC members whose positions did not carry a majority of the Council—to engage in forum shopping, or anticompetitive delay, by seeking Commission reversal or lengthy study of the NANC’s proposal. The costs and competitive risks associated with further delays to numbering administration reform clearly outweigh any potential benefits of further “tweaking” the recommendations.

TABLE OF CONTENTS

SUMMARY	i
INTRODUCTION	1
DISCUSSION.....	3
I. THE COMMISSION SHOULD IMPLEMENT THE NEW MODEL FOR NUMBERING ADMINISTRATION EXPEDITIOUSLY	5
II. THE COMMISSION SHOULD AFFIRM THE SELECTION OF LOCKHEED MARTIN AS THE NORTH AMERICAN NUMBERING ADMINISTRATOR.....	9
III. THE NANC CONDITIONS REGARDING INTELLECTUAL PROPERTY RIGHTS AND THE FIXED PRICE OF NANPA SERVICES MUST BE CONTAINED IN THE COMMISSION’S RULES.....	13
A. The Intellectual Property Rights Rule Fosters Competition In Numbering Administration	13
B. The Fixed Price Rule Protects Industry and Consumer Interests	15
IV. THE COMMISSION SHOULD AFFIRM THE SELECTION OF NECA AS THE BILLING AND COLLECTION AGENT SUBJECT TO THE STRICT NEUTRALITY CURE RECOMMENDED BY NANC.....	19
CONCLUSION	21

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COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation ("MCI"), by its attorneys, respectfully submits these comments on the Public Notice released by the Federal Communications Commission ("Commission") seeking comment on the recommendations of the North American Numbering Council ("NANC") regarding telephone numbering administration.¹

INTRODUCTION AND SUMMARY

Fair and efficient number administration is essential to the growth of telecommunications competition. Unfortunately, current number administration in the United States is not fair or efficient, and thus directly impedes the growth of competition. Time and time again MCI has confronted discrimination, unnecessary obstacles, and delays in attempting to obtain numbering resources that were and *continue* to be controlled by its competitors, the regional Bell Operating Companies ("RBOCs")—either directly in their capacity as administrators of Central Office ("CO")

¹ *The North American Numbering Council (NANC) Issues Recommendations on the North American Numbering Plan Administrator, Billing and Collection Agent, and Related Rules: Pleading Cycle Established*, Public Notice, DA 97-1055, CC Docket No. 92-237 (released May 19, 1997)("Public Notice").

Codes or indirectly through the role of Bell Communications Research (“Bellcore”) as the North American Numbering Administrator. Such a number administration model—incumbents administering numbering resources that are crucial to their competitors—conflicts with the overriding deregulatory and pro-competitive goals of the Telecommunications Act of 1996 (“1996 Act”), directly violates the principles of impartiality set forth in the 1996 Act, and cannot be permitted to continue one day longer than it absolutely must.

Against this background, MCI applauds the Commission’s dedication to developing a new model for telephone numbering administration, and MCI strongly endorses NANC’s recommendation that Bellcore be replaced as the North American Numbering Administrator (“NANPA”). It is important that the FCC act rapidly to implement these recommendations. The Commission’s recent commitment to ensuring fair and efficient number administration is both appropriate and encouraging, but the actual implementation of this new number administration model is by now long overdue. Although the Commission first began examining the need for a new NANPA in 1991—and despite the requirement in Section 251(e) of the 1996 Act that the Commission transfer NANPA authority from Bellcore and the dominant incumbent local exchange carriers (“LECs”) to a neutral and impartial number administrator—the Commission still has yet to act on this competitively vital subject.²

² A glimpse at the history of this proceeding demonstrates that reform of numbering administration is long overdue. The need for the FCC to control numbering administration was first formally brought to the attention of the Commission in September 1991 when the National Association of Regulatory Utility Commissioners (“NARUC”) petitioned the Commission to examine NANP administration and to replace Bellcore as NANPA. Following this petition, the Commission issued a Notice of Inquiry (“NOI”) in 1992 that recognized the deficiencies and discrimination associated with the existing number administration model, *Administration of the North American Numbering Plan*, Notice of (Footnote continued on next page)

The Commission imposed an aggressive schedule on the NANC to develop its recommendations concerning selection of a new North American Numbering Administration to replace Bellcore.³ The concerted efforts of a broad cross-section of the telecommunications industry participated in the NANC activities leading to NANC's May 15, 1997 recommendation of Lockheed Martin Corp. ("Lockheed") for selection as the new NANPA. MCI is pleased to have had the opportunity, along with many other industry, consumer and state regulatory groups, to assist the NANC in providing well-reasoned and timely recommendations to the Commission. MCI representatives served on the NANC, the NANC Steering Group, the NANPA Working Group, and several of the NANPA Working Group Task Forces.⁴ We believe the open NANC process has led to a sensible result that is in the best interests of telecommunications providers, customers and regulators, and will best serve the public interest.

Inquiry, 7 FCC Rcd 6837 (1992) ("NOI"), and Bellcore in 1993 itself asked to be relieved of number administration obligations in the increasingly competitive telecommunications industry. *See* Letter from G. Heilmeier, Bellcore CEO, to the Commission, dated August 19, 1993. Inexplicably, however, the Commission delayed adopting a new model for number administration until July of 1995. *Administration of the North American Numbering Plan*, Report and Order, 11 FCC Rcd 2588 (1995) ("NANP Order"). In its *NANP Order*, the Commission set forth a new mechanism for numbering administration model and created the North American Numbering Council ("NANC") to select a new administrator. *Id.* at ¶ 2. Once again, however, more than a year inexplicably passed before the Commission held the first NANC meeting. Accordingly, it is now nearly two years since the Commission officially announced its intent to select a new number administrator and more than six years since the FCC first inquired into number administration policy.

³ *See NANP Order* at ¶ 108 ("The NANC should select the NANP administrator no more than 180 days after the NANC's first meeting."). The Commission permitted a slight extension to this schedule after the NANPA Working Group made a compelling argument that meeting the 180-day deadline was impossible.

⁴ Throughout its existence, MCI has recognized the importance of fair and efficient numbering administration and has been committed to participating in industry numbering committees and forums. For example, MCI is active in the Industry Numbering Committee and the Carrier Liaison Committee (and its various groups that address issues related to numbering), and was active in the Future of Numbering Forum.

NANC's recommendation of Lockheed Martin as the new NANPA is correct because Lockheed is technically and operationally able to perform as NANPA, offers very substantial price savings, and will deliver efficiency and synergy advantages to number administration activities. In this regard, MCI supports the proposed rules and dispute resolution mechanism recommended by the NANC, and cautions that it is *absolutely essential* that the NANC's recommended conditions regarding intellectual property rights and a fixed price for NANPA services—recommendations that enforce important concessions Lockheed made to NANC as part of the selection process—are adopted as Commission regulations. MCI also supports the recommendation of the National Exchange Carrier Association ("NECA") as the billing and collection agent, provided that NECA implements the NANC's recommended neutrality cure and requires balanced representation, from of all industry segments, on an independent NECA board.

The Commission has set forth a good long-term structure for number administration in a competitive telecommunications environment, and the NANC has provided strong recommendations for fair and efficient numbering through a process representative of industry, consumer and regulatory interests. Thus, the Commission can and should quickly implement the NANC recommendations and, at long last, begin the transition to a new, neutral model for telephone number administration.

I. THE COMMISSION SHOULD IMPLEMENT THE NEW MODEL FOR NUMBERING ADMINISTRATION EXPEDITIOUSLY

The growth of telecommunications competition depends on the prompt implementation of a new model for telephone numbering that ensures fair, effective and impartial numbering administration. Not a single communications service can be offered that does not require a service provider to obtain some type of numbering resources. As a result, numbering resources provide an essential key to telecommunications market entry and effective competition, particularly in the provision of local telephone services. This Commission has "repeatedly recognized that access to telephone numbering resources is crucial for entities wanting to provide telecommunications services."⁵ Under the current administration model, the Regional Bell Operating Companies ("RBOCs")—either directly or through Bellcore—GTE and other incumbent LECs control this key and have the incentive and opportunity to use that key to protect their monopolies in local service and keep the door to competition locked. The Commission must open the door to competition by expeditiously taking number administration authority away from the incumbent LEC monopolists.

This action must occur quickly, since the seeds of local exchange competition are already being planted, as contemplated by the 1996 Act. In fact, the Act requires that the Commission implement a new numbering administration model to ensure fair and efficient numbering administration that fosters competition. Recognizing the importance of numbering resources for the growth of competition, the 1996 Act

⁵ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order*, CC Docket No. 96-98, FCC 96-333 at ¶ 261 (released Aug. 8, 1996) ("*Local Competition Second Report and Order*").

provides that the Commission “shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis.”⁶ By including in the Section 271 competitive checklist the requirement that RBOCs must provide nondiscriminatory access to numbering resources, the 1996 Act recognizes the ability of RBOCs to use their unique position as number administrators to use numbering anticompetitively against other carriers.⁷ Until a neutral numbering administrator is actually selected, disputes as to RBOC compliance with their legal obligation for nondiscriminatory numbering administration will continue to prevent RBOCs from meeting their Section 271 burdens for entry into the interexchange market. 47 U.S.C. § 271(c)(2)(B)(ix). Furthermore, although the Commission found in the *Local Competition Second Report and Order* that “the action taken in the *NANP Order* satisfies the Section 251(e)(1) requirement that the Commission create or designate an impartial numbering administrator,”⁸ Congress can only become increasingly concerned if a new administrator is not *actually selected*. Unless the Commission now proceeds expeditiously, it is probable that the implementation of a new numbering administration model will stretch into the next century,⁹ an undesirable result that cannot be consistent with the FCC’s responsibilities under the 1996 Act.

⁶ 47 U.S.C. § 251(e)(1).

⁷ *Id.* at § 271(c)(2)(B)(ix).

⁸ *Local Competition Second Report and Order* at ¶ 264.

⁹ Under the implementation schedule defined by the Commission in the *NANP Order*, it will be at least 21 months from the day the Commission selects the new administrator until the new administration model is fully in place. *NANP Order* at ¶ 45. Thus, unless the Commission issues an Order expeditiously and sets in motion the transition process, the next century will have dawned before the new administration model is completely implemented. Considering that the Commission opened this proceeding in 1992, this would seem like an inordinate amount of time to implement these crucial reforms.

The Commission has already laid the groundwork to expeditiously implement a new number administration model. After years of public comment and debate, in the *NANP Order* the Commission set forth a model for future numbering administration and placed its confidence and trust in the industry by creating a Federal Advisory Committee, the NANC, to make recommendations that would make that model a reality. Recognizing the importance of reforming number administration quickly, the Commission imposed an aggressive schedule on the NANC to develop its recommendations.¹⁰ With the expenditure of much effort and time, many personal sacrifices, and the dedicated assistance of the Commission's Staff, the NANC met this challenge by providing fully debated and well-reasoned recommendations to the Commission. Thus, the Commission has laid the groundwork and industry, consumers and state regulatory bodies—through the NANC recommendations—have provided the details that enable the Commission to promptly select a new number administrator and adopt number administration rules that begin the transition to a neutral and impartial telephone numbering system.

The NANC's recommendations represent a balanced view of industry, consumer and state regulatory bodies. All interested parties have had an opportunity to participate in the NANC process and shape the recommendations. The Federal Advisory Committee Act requires that advisory committees be open to the public,¹¹ a requirement with which NANC complied. Furthermore, the Commission exceeded the requirements of FACA and took additional steps, such as creating a World Wide Web

¹⁰ *NANP Order* at ¶ 108.

¹¹ Federal Advisory Committee Act, 5 U.S.C., App. (1988) ("FACA").

page, to ensure that all interested parties were aware of the activities of the NANC and had the opportunity to provide input to the NANC on the selection criteria and process. Other procedures—such as ensuring broad industry representation, conducting open meetings, providing fair consensus development procedures, making available telephone conference facilities for parties that could not attend meetings, establishing e-mail mailing lists and developing other Web pages—were developed to ensure open and fair participation on the NANPA Working Group which conducted much of the work that underlies NANC's recommendations. Thus, no party can contend that it was denied fair access to or the opportunity to offer input for the NANC recommendations.

While the recommendations may not be perfect, they will meet the needs of industry, serve the public, and represent a fair choice under the circumstances. MCI may have preferred that certain specific aspects of the recommendations would have either been removed or modified. Nonetheless, MCI fully supports the recommendations and emphasizes *the critical importance of implementing Lockheed's selection as rapidly as possible*. The costs and competitive risks associated with further delays to numbering administration reform clearly outweigh any potential benefits of further "tweaking" the recommendations. Therefore, MCI urges the Commission to proceed with the process of adopting the NANC's recommendation with the same sense of urgency that it imposed upon the industry. The FCC should remain sensitive to efforts by those whose views were not accepted by NANC—whether rejected applicants or NANC members whose views did not carry a majority of the Council—to engage in forum shopping, or anticompetitive delay, by seeking FCC reversal of the NANC's recommendations. The future of number administration, ant to a large extent the future of local telephone

competition, depend directly upon expeditious Commission adoption of the NANC recommendations.

II. THE COMMISSION SHOULD AFFIRM THE SELECTION OF LOCKHEED MARTIN AS THE NORTH AMERICAN NUMBERING ADMINISTRATOR

The NANC has recommended Lockheed Martin as the preferred choice to serve as the new NANPA and Mitretek as the first alternate.¹² In selecting Lockheed, NANC indicated that its recommendation was based on the conclusion that Lockheed displayed a firm understanding of numbering complexities and differentiated itself from the other respondents by providing innovative ideas and forward-looking, state-of-the-art administration tools that the NANC considered essential.¹³ While the NANC believed that both Lockheed and Mitretek would have the technical competence to serve as NANPA, it identified several advantages associated with the selection of Lockheed over Mitretek, including: (1) that the cost of Lockheed's proposal was half as much (\$22.5 million less) as Mitretek's proposal; (2) that Lockheed has substantial, existing numbering experience associated with local number portability ("LNP") administration and the 800/888 help desk; (3) that there is potential to achieve synergy

¹² Recommendation of the North American Numbering Council (NANC) North American Numbering Plan (NANP) Administrator and Billing and Collection Agent, at 3, May 15, 1997 ("NANC Recommendation"). NANC selected from four candidates who submitted proposals in response to a "requirements document" released by NANC: Bellcore, the Center for Communications Management, Lockheed Martin and Mitretek *Id.* at 3.

¹³ *Id.* In addition, the NANC indicated that it had concerns associated with Bellcore serving as the new NANPA regarding the perception of "undue influence" by one industry segment and that CCMI was not technically or operationally capable to serve as NANPA. *Id.* at 15-16. MCI concurs with the NANC's concerns about Bellcore's neutrality (even under its new ownership structure, should the pending sales of Bellcore to SAIC be completed), and does not believe that Bellcore qualifies as an "impartial" numbering administrator under Section 251(e)(1) of the Act.

associated with future consolidation of numbering administration systems associated with Lockheed's number portability involvement;¹⁴ and (4) that Lockheed's centralized approach to CO Code administration could achieve significant cost savings and overhead efficiencies, benefiting all industry segments.¹⁵

MCI concurs with the NANC recommendation and urges the Commission to select Lockheed Martin as the new NANPA. MCI shares NANC's view that, technically and operationally, both Lockheed and Mitretek are capable of fairly and effectively serving as NANPA. Nonetheless, as a majority of NANC agreed, Lockheed should be selected because the cost of having Lockheed serve as NANPA is so *substantially* less than Mitretek's cost and because there is the potential for future synergies with Lockheed's number portability activities.

Given NANC's finding that both Lockheed and Mitretek were essentially equally capable or providing technically competent, neutral administration of North American area codes and CO Codes, both industry and consumer interests dictate that the Commission select Lockheed as the new NANPA. Lockheed's price is \$22.5 million less than that of Mitretek to perform equivalent services. It is common sense that when equivalent services are available and one provider can make the service available at a lower price, that provider should be selected. Furthermore, it would violate the public trust if the Commission unnecessarily, and counter to industry recommendations, imposed \$22.5 million of costs on the telecommunication industry that would ultimately be passed along to consumers. Any concern that Lockheed's low price may

¹⁴ *Id.* at p. 5.

¹⁵ *Id.* at p. 10.

have resulted from an underestimation of the personnel and financial requirements associated with serving as NANPA is misplaced in light of the firm price commitments that the NANC recommended¹⁶ and the conclusion reached by the industry technical experts in the NANPA Working Group that Lockheed could perform the NANPA functions adequately.

MCI strongly opposes paying more money for NANP Administration than is necessary. Under the Commission's current proposal for recovery of the costs associated with number administration—in which a carrier's charges for numbering administration will be based on its net telecommunications revenues¹⁷—as a large carrier, MCI would be required to bear a substantial portion of the \$22.5 million difference between Lockheed's and Mitretek's bid prices (approximately \$1.5 million for MCI alone) if Mitretek is selected. MCI has always indicated that it was willing to pay its fair share of number administration costs,¹⁸ but no carrier should be compelled pay an additional and unnecessary \$1.5 million for services that NANC determined were technical equivalent between these two "finalists."

One of the important differences between these two proposals is the respective treatment of CO Code administration. NANPA's functions, under the *NANP Order*, will include both the current Bellcore functions of Numbering Plan Area ("NPA") Code assignment and relief planning, along with the CO Code administration functions now performed in a decentralized manner by 13 local exchange carriers (including all the RBOCs). While both Mitretek and Lockheed proposed consolidation of these CO Code

¹⁶ See Section III(B) below.

¹⁷ *Local Competition Second Report and Order* at ¶¶ 343-344.

¹⁸ See e.g., MCI Comments in Response to the NANP NPRM at 13.

administration functions, Lockheed's proposal would completely centralize CO Code administration. This will allow the elimination of unnecessary overhead duplication (personnel, facilities, support services, etc.) and permit a more consistent application of the CO Code assignment guidelines in the new, competitive local exchange environment. The historic monopoly position of Bellcore and incumbent LECs in numbering has led to a host of inefficient practices, of which CO Code decentralization is a principal one that Lockheed proposes to immediately terminate. It is time to bring numbering administration into the 20th Century, and Lockheed's proposed management structure, along with its application of advanced technology to NANPA activities, would do just that.

Lockheed's selection will also enable number "exhaust" problems, which are accelerating the pace of NPA relief activities (area code splits, overlays, etc.), to be administrated more cost-effectively. As the Commission is aware, the NANC has also recommended that Lockheed serve as the Number Portability Administration Center ("NPAC") in four of the seven regions of the United States.¹⁹ Because Lockheed will be serving both as NPACs and NANPA, it will be ideally suited to develop processes and technologies, and make policy recommendations to the Commission, to foster the efficient introduction of new approaches (such as number pooling) that take advantage of number portability to slow the rate of numbering resource exhaust. Thus, MCI believes that an additional benefit of having Lockheed serve as NANPA is the clear

¹⁹ North American Numbering Council Local Number Portability Administration Selection Working Group, at 21, April 25, 1997.

synergies that may be achieved as a result of Lockheed also serving as local number portability NPACs.

III. THE NANC CONDITIONS REGARDING INTELLECTUAL PROPERTY RIGHTS AND THE FIXED PRICE OF NANPA SERVICES MUST BE ADDED TO THE COMMISSION'S RULES

The NANC unanimously approved provisions related to pricing and intellectual property rights in its May 15 recommendation.²⁰ MCI believes that these two provisions are absolutely essential to the selection of a new NANPA and must be incorporated in the Commission's rules as recommended by the NANC. These proposed regulation will ensure that the cost of number administration does not exceed expectations and, should the new NANPA be terminated at the conclusion of its initial five-year term, that another entity can easily replace the existing NANPA by freely acquiring any intellectual property necessary for performing the NANPA function.

A. The Intellectual Property Rights Rule Fosters Competition in Numbering Administration

The NANC recognized possible concerns associated with the transfer of intellectual property rights in the event that the NANPA is replaced. As a result, NANC unanimously recommended that if the NANPA is replaced, any intellectual property developed for NANPA functions be made available, free of charge, to a successor NANPA. Thus, NANC's proposed Rule 52.13(f) provides:

The NANP Administrator shall make available any and all intellectual property and associated hardware including, but not limited to, systems, software, interface specifications and supporting documentation, generated by or resulting from its performance as NANP Administrator and make such property available to whoever NANC directs free of charge. The entity or entities designated by the Commission to serve as

²⁰ NANC Recommendation at p. 17.

NANP Administrator shall specify any property it proposes to exclude from the foregoing based on the existence of such property prior to its selection as NANP Administrator.²¹

This intellectual property condition is a key ingredient to NANC's recommendation because it is an important concession that Lockheed made to NANC during the proposal review process. Although Lockheed had initially taken the position that it would own any intellectual property associated with NANPA activities, NANC was concerned that such an approach could "lock in" the NANPA selected by the Commission, leading to future price increases for NANPA services and impeding future competition for NANPA selection. At NANC's request, all the four bidding parties were asked to agree to a free transfer of NANPA intellectual property to any NANC or FCC-selected entity.²²

The intellectual property rule is necessary to ensure that if another entity replaces the new NANPA, the new entity will be able to effectively assume the responsibilities of NANPA through access to the underlying technology and intellectual property. This will allow the selection process for the next NANPA in five years to remain competitive, because the incumbent NANPA at that time will not be able to use its possession of intellectual property rights as a barrier to other entities seeking to become the NANPA. Additionally, the proposed rule will save industry and consumers money because systems and processes will not need to be developed repeatedly, at industry expense, if the NANPA is replaced. Finally, such a rule is likely

²¹ NANC Recommendation, Attachment 2, NANPA Rules at 5.

²² Much like the rules of the American National Standards Institute, this intellectual property requirement assures that if a technology becomes the industry "standard" for telephone numbering, it will be available to all competitors on fair, reasonable and non-discriminatory terms.

to serve as an incentive for the existing NANPA to perform well, because it will be aware of the fact that it can be more readily replaced and its ability to recoup investment in new technology requires that it provide fair, efficient number administration to its telecommunications industry “customers.”

The proposed NANC rule is limited to intellectual property developed as a result of NANP functions, and allows the NANPA to exclude any current intellectual property from the scope of the transfer obligation. MCI encourages the Commission to clearly indicate in its Order that the new NANPA has not specified any property that it proposes to exclude, pursuant to the last sentence of the above rule. Such an indication is important to avoid the possibility of future disputes in the event that another entity replaces the new NANPA. MCI is unaware of any declaration by Lockheed claiming exclusion of any property from the requirements of this proposed rule.

B. The Fixed Price Rule Protects Industry and Consumer Interests

Another rule proposed by NANC would constrain the ability of the NANPA to claim that adjustments to the bid price are required during the initial five-year term. As the Commission is well aware, numbering administration is inherently variable, and predictions of numbering resource growth have been substantially imprecise over the last decade given sharp increases in demand for telephone numbers. As a result, NANC was concerned that the FCC’s selection of a new NANPA not become victim to a later effort to augment the proposed price under the guise of changed circumstances. Because one of the relative advantages of Lockheed over Mitretek was Lockheed’s commitment to a fixed price—under the assumptions laid out in NANC’s “requirements document”—NANC endeavored to “give teeth” to this fixed price by proposing a regulation that would codify

the fixed price aspect of NANPA compensation. Consequently, NANC unanimously recommended proposed Rule 52.15(d), which provides:

The NANPA shall perform the NANPA functions at the price agreed to at the time of its selection. The NANPA may request from NANC, with approval by the Commission, an adjustment in this price should the actual number of CO Code assignments made per year, the number of NPAs requiring relief per year, or the number of NPA relief meetings per NPA requiring relief exceed 120 percent of NANPA's stated assumptions for the above tasks at the time of its selection²³

MCI strongly urges the Commission to adopt this rule as proposed by the NANC. The benefits of such a rule are obvious—it ensures that the new NANPA will abide by its price commitments and therefore protect industry and consumer interests from arbitrary price increases. This rule ensures that the cost of number administration does not exceed expectations, thereby imposing unexpected costs on carriers. Finally, the rule includes specific and measurable criteria that must be met in order to justify any request for price increase. This provides a clear set of objective parameters to assess whether a price adjustment should be permitted, and will prevent the new NANPA from repeatedly requesting price increases from the NANC, as price change would only be permitted in the event that the listed thresholds are exceeded.

Along with the intellectual property rule, this fixed price guarantee is one of the principal grounds on which NANC's recommendation of Lockheed differs from the NANPA Working Group's initial recommendation of Mitretek. Concerns had been raised in NANC deliberations that Lockheed may have underestimated the personnel and capital investment required to meet the NANPA obligations, despite its

²³ NANC Recommendation, Attachment 2, NANPA Rules at 6. Note that the text of the proposed rule specifies "exceed 20 percent." The cover letter accompanying the recommendation notes that this phrase should read "exceed 120 percent."

commitment to efficiency and technological development. To alleviate that concern, NANC asked all of the proposing entities what they would do if actual demand for NANP services substantially exceeded those forecast as the basis for their bids. The resulting “fixed price” rule, by eliminating any price increases unless the actual volume of identifiable NANPA functions increase more than 120% above that forecast, ensures that the benefits of Lockheed’s lower price bid will actually be delivered, despite the inherent variability of numbering activities. Furthermore, MCI believes that the risk of any such underestimation, or dramatic increase in underlying NPA and CO Code activities required of NANPA, will probably decline in the near term as new number conservation measures—in particular the number pooling made possible with local number portability—are phased in and substantially reduce the current systemic demand for distribution of telephone numbers in large, 10,000 number NXX-blocks.

A minor textual difference exists between the proposed rule as recommended by the NANC and the text used by the Commission to describe this rule in the Public Notice. This difference may raise confusion and have the unanticipated effect of undermining the effectiveness of the fixed price guarantee. The Notice states that “the entity selected as the NANPA must perform the NANPA functions at the price the entity *submitted in its proposal* to the NANC that formed the basis for the entity’s selection by the NANC.” The Notice further indicates that the “NANC may grant an adjustment in price” if the tasks “exceed 120 percent of NANPA’s assumption for the above tasks made *in the proposal* to the NANC that formed the basis for the entity’s

selection by the NANC.”²⁴ The operative words are “submitted in its proposal” and “in the proposal.” This language differs from the words used in the proposed rule, in which the operative language is “at the time of its [NANPA] selection.”

Because some vendor proposals did not include numerical assumptions regarding the specific NANPA tasks listed in the proposed rule, the language used in the Notice may lead to confusion and an opportunity for a new NANPA to frustrate the purposes of the rule. It was only after the NANPA Working Group requested each vendor’s workload assumptions regarding these tasks that vendors provided this information. Thus, the proposals themselves do not include any assumptions regarding the task workloads and the language in the Public Notice would result in a meaningless rule regarding the task workload thresholds. Conversely, the proposed rule’s language of “at the time of selection” would include the assumptions that were provided to the NANPA Working Group. Therefore, the Commission should at the very least adopt the language of the proposed rule.

MCI also believes that it would be preferable to expressly quantify these numerical thresholds in order to avoid any later dispute about NANPA compensation. Lockheed indicated that it forecast an average of 10,000 CO Code requests per year, 50-70 NPAs requiring relief events each year, and that each NPA relief “activity” would require an average of 12 meetings.²⁵ These numerical assumptions should be stated expressly—either in the Commission’s Order or in the Rules themselves—in order to

²⁴ Public Notice at 2 (emphasis supplied).

²⁵ May 2, 1997 Response of Lockheed Martin to the NANPA Working Group; *see* Letter from Gregory J.A. Roberts, Lockheed Martin IMS, Director of Communications Industry Services, to John Manning, Co-Chair, NANPA Working Group, May 15, 1997.

make them clearly part of the public record in this proceeding, and thus enforceable by both NANC and the Commission.

IV. THE COMMISSION SHOULD AFFIRM THE SELECTION OF NECA AS THE BILLING AND COLLECTION AGENT SUBJECT TO THE STRICT NEUTRALITY CURE RECOMMENDED BY NANC

The NANC recommends NECA as the Billing and Collection ("B&C") Agent subject to the implementation of a neutrality cure.²⁶ The basis of this recommendation is that NECA has cost recovery expertise and significant experience in telephone industry billing, and that NECA's price is lower with the same quantity of staff than the other bidders.²⁷ The NANC had significant concerns with the neutrality of NECA and conditioned its recommendation on NECA creating an independent, neutral board that is broad-based with at least one international representative.²⁸

MCI shares the very real concern regarding the neutrality of NECA, and believes that an independent, neutral board, at the very least, is necessary to ensure that NECA serves as the B&C Agent in an impartial manner. MCI supports the recommendation of NECA as the B&C agent primarily because (a) NECA's experience administering cost recovery systems has produced a cost-savings bid for the B&C functions, and (b) the role of B&C Agent can be confined to ministerial functions unrelated to numbering administration or numbering policy. Given the sensitivity and importance of numbering issues, however, a *completely independent board* is essential to NECA's ability to discharge the B&C Agent functions in a fair and impartial manner, given its LEC-

²⁶ NANC Recommendation at p. 12.

²⁷ *Id.* at 12.

²⁸ *Id.* at 13.

dominated membership. As MCI noted in the Docket 97-21 proceedings on NECA's board of director changes in connection with universal service administration, "by proposing to have members of NECA's board remain on the divested [subsidiary], NECA would import [these] conflicts of interest into the new entity."²⁹ There, NECA had proposed formation of a wholly-owned subsidiary, which would include NECA board representation. Here, in contrast, NANC has recommended requiring that NECA's role be conditioned on complete independence of the B&C functions through creation of an independent, non-NECA board.

Nothing short of this sort of independence can satisfy the neutrality requirement of Section 251(e)(1) of the 1996 Act. It is vital that the Commission implement NANC's recommendation by requiring creation of a NECA board, "exclusively for" B&C functions, that is not "aligned or associated with any particular industry segment."³⁰ This means that B&C activities must be controlled not by LECs or their trade association proxies, but rather by board on which there is balanced representation from all segments of the telecommunications industry, including CLECs, IXC's, wireless carriers and others. *See* Proposed Rule 52.12(a) (B&C Agent may not be "aligned with any particular telecommunications industry segment"). The Commission's Order should specifically state that if NECA violates its obligation to administer B&C activities in a neutral and impartial manner, or engages in numbering administration or policy activities, aggrieved carriers will have the right to seek Commission redress—and that the Commission will act expeditiously—by enforcing the rules recommended by NANC

²⁹ MCI Comments, CC Docket No. 97-21, at 6 (filed March 3, 1997).

³⁰ NANC Recommendation at p. 12.